

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.1003 OF 1988

The State of Maharashtra Appellant
Vs.

1. Gafoor Yusuf Shaikh,
Age 22 years
2. Razak Yusuf Shaikh,
Age 25 years
3. Salim Yusuf Shaikh,
Age 27 years
4. Chand Yusuf Shaikh,
Age 20 years

All r/o Akluj, Taluka Malshiras,
District: Solapur. Respondents

Shri B.H. Mehta, Addl. Public Prosecutor,
for the Appellant.

None present for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: MARCH 04, 2005

ORAL JUDGMENT (Per P.V.Kakade, J.):

1. The State has preferred this appeal against the judgment and order dated 23-8-1988 passed by the Addl. Sessions Judge, Solapur, acquitting all the respondents of the offences punishable under Section 20(b) r/w Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the NDPS Act").

2. The facts in brief giving rise to the present case are thus:

Complainant PSI Ghode was the junior PSI at Akluj police station. Accused Nos.1 to 4 are the residents of village Akluj. On 9-5-1986, at about 8:30 p.m., when PSI Ghode was in the police station, he received an information from the informant that accused Nos.1 to 4 had kept a stock of ganja in the bungalow situated at Akluj-Indapur road. On receipt of the said information, PSI Ghode consulted PSI Shinde. They called three panch witnesses and along with these panch witnesses and two constables, PSI Ghode proceeded towards the Akluj-Indapur road and when the jeep was stopped near the gate of the bungalow of the accused, they saw accused Nos.1 to 4 in front of the bungalow in the tube-light. When the accused saw the police jeep approaching towards them, they ran behind the bungalow. They were chased but could not be apprehended. PSI Ghode then returned to the bungalow which consisted of five rooms. A search was conducted of the said bungalow. In one of the rooms 135 gunny bags were found containing ganja. In another room he found one spring weighing machine hanging from the roof. It was also attached by them. In the other room they found some household utensils and a note book containing a 7 x 12

extract of gat No.798. There was also telephone in the house. The police prepared a detailed panchnama of the seized articles, including the contraband, in the presence of those panchas. From each of the ganja bags a sample of 10 grams was taken and the same was labelled under the signature of the panchas and thereafter after taking orders from the J.M.F.C., the police deposited the ganja bags with the Excise Office at Malshiras and PSI Ghode lodged a complaint against the accused persons vide Exhibit-30. It was registered as Crime No.164/86 under Section 66(1)(b) r/w Section 83 of the Bombay Prohibition Act.

PSI Ghode carried out the investigation after registration of the crime. In the course of the investigation, he recorded the statements of various witnesses and obtained various documents including the 7 x 12 extract of gat No.798 showing the house as belonging to the accused persons. He also obtained the house extract from the Gramsevak bearing House No.3730/3A and his statement came to be recorded. In the meantime, the seized article was sent to the chemical analyser for examination, whose report was received in due course and which is part of the record. On the basis of the C.A. report and the other investigation, charge-sheet was sent to the Court of the J.M.F.C., Malshiras alleging that the accused were

arrested for commission of the offences punishable under Section 20(b) r/w Section 29 r/w Section 8 of the NDPS Act. The learned J.M.F.C. committed the case to the Court of Sessions. The learned Sessions Judge framed the charge against the accused persons for commission of the offences under the NDPS Act to which the accused pleaded not guilty and the defence of the accused was that of total denial of any criminal liability sought to be imposed upon them. The prosecution led its evidence, including that of the investigating officer PSI Ghode and the other constables of the raiding party along with the three panch witnesses. On the basis of this evidence, the learned trial Judge came to the conclusion that it was not sufficient to bring home the guilt of the accused as such and they came to be acquitted by the above order. Hence the present appeal.

3. We have heard the learned A.P.P. for the appellant. None present for the respondents.

We have also perused the entire evidence on record with the assistance of the learned A.P.P.

At the outset, it may be noted that from the available evidence on record the prosecution appears to have failed to bring the factum of possession of the contraband at the relevant time and placed with the

accused and therefore the entire prosecution case collapsed on that basis.

The evidence of PSI Ghode as well as Constable Pandhare shows that when they reached the bungalow in a police jeep along with the panchas, the accused who were standing in front of the bungalow started running away. They also have stated that they saw the accused persons going behind the bungalow and they were chased, but in vain. It is also stated that thereafter PSI Ghode entered the premises consisting of five rooms and a search was conducted in which course huge incriminating articles, including contraband i.e. ganja, were found in the said bungalow. Thereafter panchnama was made in the presence of the panchas and sample was taken and complaint came to be lodged at the Akluj police station against the accused persons. It is to be noted that even though PSI Ghode has stated in his examination-in-chief that the sample was taken from the seized contraband article at the time of the raid and same was labelled with the signatures of the panchas, but he has admitted in his cross-examination that the same was not sealed and was merely affixed with labels with signatures of the panch witnesses. This aspect, in our view, assumes importance especially when none of the panchas has supported the prosecution story on any aspect. Therefore, the fact remains doubtful whether

the packet of sample of ganja was sealed or not, and if it was not sealed then there was every possibility of tampering with the packets of sample when it was kept in the custody of either the police station or the Excise Department before it was transmitted to the chemical analyser for examination. This aspect by itself has weakened the prosecution case to a great extent.

4. As noted above, none of the panch witnesses has supported the prosecution and therefore the prosecution theory that the accused persons were seen standing in front of the said bungalow and they ran away behind the bungalow when they saw the police jeep is the statement which has remained uncorroborated and therefore has to be discarded. Be as it may, the other evidence which is sought to be brought on record is also sufficient to show that the bungalow in question was at the relevant time rented to one Reddy which fact is also admitted by the prosecution witness who was examined for the purpose of ascertainment of ownership of the house in question.

There is another intriguing angle which has surfaced on record in the course of the evidence. It is evident that the I.O. did make two raids on that day and in both the raids ganja was seized. In another raid the accused in this case was also involved for possession of ganja and was separately prosecuted.

Simultaneously, this raid was also made wherein the same accused was shown to be possessing ganja at his residence i.e. the bungalow which was evidently let out to one Reddy and who was neither examined nor brought as witness before this Court to ensure that he was not in possession but the accused persons were in possession of the bungalow. Be it as it may, fact remains that at the relevant time and place none of the accused persons were found to be in actual possession of the contraband article and therefore the learned trial Judge has rightly come to the conclusion that the prosecution has failed to bring home the guilt on the question of possession of the contraband at the relevant time.

5. In view of this position, we need not go into the other aspects of the evidence except recording our finding that the reasonings adopted and the findings recorded by the learned trial Judge appear to be just, legal and proper and therefore would warrant no interference.

6. In the result, the appeal fails and stands dismissed. The bail bonds of the accused persons consequent to action under Section 390 of the Cr.P.C. stand cancelled.

(R.M.S.Khandeparkar, J.)

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(P.V.Kakade, J.)